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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 JAMES MATLEAN,

Case No. 3:16-cv-00233-HDM-VPC

10 v. Petitioner,

ORDER

11 BRIAN WILLIAMS, et al.,

12 Respondents.

14 Petitioner James Matlean has submitted a purported *pro se* petition for writ of  
15 habeas corpus, pursuant to 28 U.S.C. § 2254, a motion for stay and abeyance, and he  
16 has now paid the filing fee (ECF Nos. 1-1, 1-2, 4).

17 While Matlean used one page of the court's required form for a § 2254 petition  
18 (see ECF No. 1-1, p. 2), he did not otherwise use or follow the court's form. LSR 3-1  
19 ("A petition for writ of habeas corpus filed by a person who is not represented by an  
20 attorney must be on the form provided by this court"). Moreover, petitioner failed to set  
21 forth any grounds for relief; he merely states that he wishes to bring all claims that he  
22 previously presented to the Nevada Supreme Court (ECF No. 1-1, p. 3). He then  
23 attached numerous state-court filings, including his appeal and his appeal of the denial  
24 of his first state postconviction petition. Petitioner also indicated that his appeal of his  
25 second state postconviction petition is pending before the Nevada Supreme Court and  
26 that he brought that petition in order to exhaust some grounds he wishes to raise here.

27 Petitioner's filing is insufficient. He must set forth each ground for federal habeas  
28 relief in the space provided on this court's form and otherwise complete the form. The

1 court shall not sort through the more than 100 pages in an attempt to discern what  
 2 claims petitioner wishes to raise. Moreover, petitioner has not indicated what grounds  
 3 he asserted in his still-pending second state postconviction. Accordingly, petitioner  
 4 shall, within forty-five days of the date of this order, file an amended petition, on the  
 5 court's form, that sets forth each ground for which he seeks federal relief.

6 Matlean has also asked this court to stay the federal proceedings in accordance  
 7 with *Rhines v. Weber* pending the conclusion of his state postconviction proceedings  
 8 (ECF No. 1-2).

9 In *Rhines v. Weber*, 544 U.S. 269 (2005), the Supreme Court placed limitations  
 10 upon the discretion of the court to facilitate habeas petitioners' return to state court to  
 11 exhaust claims. The *Rhines* Court stated:

12 [S]tay and abeyance should be available only in limited  
 13 circumstances. Because granting a stay effectively excuses a petitioner's  
 14 failure to present his claims first to the state courts, stay and abeyance is  
 15 only appropriate when the district court determines there was good cause  
 16 for the petitioner's failure to exhaust his claims first in state court.  
 17 Moreover, even if a petitioner had good cause for that failure, the district  
 18 court would abuse its discretion if it were to grant him a stay when his  
 19 unexhausted claims are plainly meritless. Cf. 28 U.S.C. § 2254(b)(2) ("An  
 20 application for a writ of habeas corpus may be denied on the merits,  
 21 notwithstanding the failure of the applicant to exhaust the remedies  
 22 available in the courts of the State").

23 *Rhines*, 544 U.S. at 277.

24 The Court went on to state that, "[I]t likely would be an abuse of discretion for a  
 25 district court to deny a stay and to dismiss a mixed petition if the petitioner had good  
 26 cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and  
 27 there is no indication that the petitioner engaged in intentionally dilatory litigation  
 28 tactics." *Id.* at 278.

29 Thus, the court may stay a petition containing unexhausted claims if: (1) the  
 30 habeas petitioner has good cause; (2) the unexhausted claims are potentially  
 31 meritorious; and (3) petitioner has not engaged in dilatory litigation tactics. *Rhines*, 544

1 U.S. at 277; *Gonzalez v. Wong*, 667 F.3d 965, 977–80 (9th Cir. 2011). “[G]ood cause  
2 turns on whether the petitioner can set forth a reasonable excuse, supported by  
3 sufficient evidence, to justify [the failure to exhaust a claim in state court].” *Blake v.*  
4 *Baker*, 745 F.3d 977, 982 (9th Cir. 2014). “While a bald assertion cannot amount to a  
5 showing of good cause, a reasonable excuse, supported by evidence to justify a  
6 petitioner’s failure to exhaust, will.” *Id.* An indication that the standard is not particularly  
7 stringent can be found in *Pace v. DiGuglielmo*, 544 U.S. 408 (2005), where the  
8 Supreme Court stated that: “[a] petitioner’s reasonable confusion about whether a state  
9 filing would be timely will ordinarily constitute ‘good cause’ to excuse his failure to  
10 exhaust.” *Pace*, 544 U.S. at 416 (citing *Rhines*, 544 U.S. at 278). *See also Jackson v.*  
11 *Roe*, 425 F.3d 654, 661–62 (9th Cir. 2005) (the application of an “extraordinary  
12 circumstances” standard does not comport with the “good cause” standard prescribed  
13 by *Rhines*).

14 Here, petitioner has not even identified for this court the nature of his  
15 unexhausted claims. Accordingly, petitioner’s motion for stay is denied without  
16 prejudice. If petitioner elects to file an amended petition and if he can demonstrate that  
17 he meets the standard for a stay he may file a new motion for stay and abeyance.

18 **IT IS THEREFORE ORDERED** that the Clerk shall detach and file the petition  
19 (ECF No. 1-1).

20 **IT IS FURTHER ORDERED** that within **forty-five (45) days** of the date of this  
21 order petitioner shall file an amended petition on the court-required form in conformance  
22 with this order.

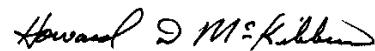
23 **IT IS FURTHER ORDERED** that the Clerk shall detach and file petitioner’s  
24 motion for stay (ECF No. 1-2).

25 **IT IS FURTHER ORDERED** that petitioner’s motion for stay is **DENIED** without  
26 prejudice.

1           **IT IS FURTHER ORDERED** that failure to file an amended petition in  
2 conformance with this order may result in the dismissal of this action without prejudice.  
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4           **IT IS FURTHER ORDERED** that the Clerk shall send petitioner two copies each  
5 of an application form to proceed *in forma pauperis* for incarcerated persons and a  
6 noncapital Section 2254 habeas petition form, one copy of the instructions for each  
7 form, and a copy of the papers that he submitted in this action.  
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9           DATED: November 2, 2016.  
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11           HOWARD D. MCKIBBEN  
12           UNITED STATES DISTRICT JUDGE  
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